

APPLICANTS:
Ellis Diaz and Ken Freebairn

**REQUEST: A variance to disturb the
Natural Resource District in the R1 District**

HEARING DATE: February 28, 2007

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

**Consolidated
Case Nos. 5581 & 5588**

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Ellis Diaz and Ken Freebairn

LOCATION: 2621 Smallwood Drive – Overview Manor, Abingdon
Tax Map: 56 / Grid: 3F / Parcel: 423 / Lot: 49
First (1st) Election District

2619 Smallwood Drive – Overview Manor, Abingdon
Tax Map: 56 / Grid: 3F / Parcel: 423 / Lot: 48
First (1st) Election District

ZONING: R1 / Urban Residential District -Conventional with Open Space (R1/COS)

REQUEST: A variance pursuant to Section 267-41D5(d) of the Harford County Code, to disturb the Natural Resource District in the R1 District.

TESTIMONY AND EVIDENCE OF RECORD:

Case Numbers 5581 and 5588 ask for identical relief, and involve adjoining improved parcels. For that reason, the two cases are consolidated and will be decided together.

For the Applicants testified Ellis Diaz. Mr. Diaz is the owner of that 0.2131 acre parcel located at 2621 Smallwood Drive in Overview Manor, Abingdon, Maryland. Mr. Diaz's property is zoned R1/Urban Residential.

Mr. Diaz's property adjoins property owned by Ken Freebairn, located at 2619 Smallwood Drive. Mr. Freebairn's property is similarly improved, and is 0.875 acres in size.

Mr. Diaz presented testimony in support of the variances requested for both properties.

Mr. Diaz purchased his property in the year 2003. His concern, and the concern of Mr. Freebairn, is that their backyards are impacted by such a steep and unnatural grade that it is difficult, if not impossible, to maintain. The grade is so pronounced that it, in fact, presents a safety hazard.

Case Nos. 5581 – Ellis Diaz and 5588 – Ken Freebairn

Both Mr. Diaz's property and that of Mr. Freebairn are heavily impacted by a Natural Resource District to the rear. That Natural Resource District comes well up to the rear of their house and encompasses extremely steep slopes to the rear of their homes. As a result, the slopes cannot be altered or changed without the requested variance.

Mr. Diaz explained that everyone on his street is impacted by a Natural Resource District which runs behind their respective residences. However, it is only his residence and that of Mr. Freebairn which are restricted to such an extent that the rear yards are unusable.

Mr. Diaz also has found trash and other debris within the steep slopes in his rear yard. This has led him to believe that the slopes are not natural, but were created by the developer of his lot or builder of his home.

Mr. Diaz, in order to correct the problems with his rear yard, proposes to bring in fill material in order to help mitigate the extreme slope and drop off in his rear yard. Because he and Mr. Freebairn are similarly impacted, Mr. Diaz believes that both properties must be graded together. Merely bringing in fill on one slope would not be practical, and would not be sufficient to stop the erosion on either lot.

Mr. Freebairn and Mr. Diaz believe that up to 30 truck loads of fill material will be necessary in order to mitigate the slopes. Attachments 11 and 12 are the Applicants' drawings of the area which needs to be filled, and a side view showing the area to be graded.

Mr. Diaz had earlier obtained an estimate from a landscaper to construct a retaining wall. The estimate was \$23,000.00, which Mr. Diaz cannot afford. Furthermore, he does not believe that a retaining wall will be as effective as would be a permanent change in the configuration of the slope.

No neighbor has expressed any opposition to the requests of Mr. Diaz and Mr. Freebairn.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune confirmed that there exists extensive steep slopes to the rear of the Diaz and Freebairn properties. While normally the Department does not look favorably upon requests to vary the Natural Resource District, in this situation the Department feels that the slopes are so extreme that they will not maintain vegetation. A serious erosion problem exists, with soil on the slopes not being retained. Accordingly, the Department feels that the solution proposed by the Applicants is the only feasible solution, and one which should actually help protect the natural state of the area.

Furthermore, both the Diaz and Freebairn properties must be improved together to have any hope of actually correcting the erosion and safety problems which the steep slope presents.

Accordingly, the Department of Planning and Zoning believes the property is very unique, and that the requested variances to the Natural Resource District should be granted.

Mr. McClune also noted that a report had been requested from the Soil Conservation District and the Department of Natural Resources, with no unfavorable responses received.

Case Nos. 5581 – Ellis Diaz and 5588 – Ken Freebairn

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-41D5(d) of the Harford County Code states:

“(5) Conservation requirements. The following conservation measures are required within this district:

(d) Any land in excess of twenty-five percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary road and utilities. Not more than thirty percent (30%) of any land in excess of fifteen percent (15%) slope and less than twenty-five percent (25%) slope shall be cleared of natural ground cover or vegetation in preparation for development.”

Section 267-41D(6) of the Harford County Codes states:

“(6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

While normally opposed to applications which tend to vary the terms of the Natural Resource District, the Department of Planning and Zoning believes that in these cases the situation of the Applicants is so extreme as to justify the requested relief. Evidence of record supports such a finding.

A review of the Applicants' drawings and photographs in the file reveal what can only be described as an extreme situation. The backyards of both properties fall drastically away from close to the rear of the homes to the back of each lot. The change in grade is so severe as to cause erosion problems which, over time, have revealed debris and trash buried into the slope. Furthermore, it is quite obvious that the slopes are so severe as to cause a potential safety hazard to the people using the backyards. A trip and fall down the slopes on either of the Applicants' property could easily cause injury. Furthermore, while the Natural Resource District impacts all adjoining homes, none are as extremely affected as are the Applicants'.

Case Nos. 5581 – Ellis Diaz and 5588 – Ken Freebairn

The Applicants propose a solution which, in the Department's opinion, is the best to preserve the natural features of the area. The Applicants propose to truck in fill material, re-slope and re-landscape the area so as to reduce the angle of the slope, reduce erosion, create a more usable backyard, and in general stabilize the area. In truth, such a proposal would do more to benefit the property owners and the surrounding area, as well as the Natural Resource District, than maintaining that portion of the Natural Resource District in its present condition.

It is further noted that the applicable standard for the granting of these variances simply requires a finding of no adverse affect on the Natural Resource District. Such a finding is clearly supported by the evidence and is made herein. The proposal by the Applicants will have no adverse affect on the Natural Resource District and, quite unusually, will in fact benefit the District.

It is further found that the relief requested is the minimum necessary to alleviate the hardship experienced by the Applicants, and there will be no adverse impact on any adjoining property or property owner.

CONCLUSION:

It is accordingly recommended that the requested variances be granted, subject to the Applicants:

1. Obtaining all necessary approvals and permits for the grading.
2. The Applicants shall submit a landscaping plan to be reviewed and approved by the Harford County Department of Planning and Zoning.

Date: _ March 19, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on APRIL 16, 2007.